

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP527-CR

Cir. Ct. No. 2011CF2196

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROCKY LANE GRIGGS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Rocky Lane Griggs appeals from a judgment of conviction, entered upon his guilty plea, on one count of first-degree reckless injury while armed with a dangerous weapon. Griggs also appeals from an order denying his postconviction motion for sentence modification. Griggs contends the

circuit court erroneously exercised its sentencing discretion in setting the length of his sentence and in setting the conditions of his extended supervision terms. We reject Griggs's arguments and affirm the judgment and order.

BACKGROUND

¶2 In May 2011, Griggs had a fight with his girlfriend's intoxicated brother. Griggs left, but returned with a gun. Though he claimed he wanted "to only scare" the brother, Griggs fired the gun at least six times, striking the brother three times in the chest and once in the arm. The brother has not fully recovered, and one bullet remains in his body.

¶3 Griggs was originally charged with one count of attempted first-degree intentional homicide with use of a dangerous weapon and one count of possession of a firearm by a felon, both as a repeater. In exchange for Griggs's guilty plea, the State agreed to amend the main charge to first-degree reckless injury with use of a dangerous weapon while dismissing the felon-in-possession charge. The State also agreed to recommend a sentence of eighteen years' initial confinement and eight years' extended supervision out of a maximum possible thirty years' imprisonment. Griggs would be free to argue for any sentence.

¶4 The circuit court accepted the plea, adjudicated Griggs guilty of the reckless injury charge, and imposed a sentence of thirteen years' initial confinement and eight years' extended supervision. As a condition of extended supervision, the circuit court required Griggs, who reads at a second- or third-grade level and never completed high school, to obtain a high school diploma equivalent. The circuit court then also required Griggs, who has never held a job, to obtain full-time employment. As an alternative to full-time employment,

though, Griggs could be a full-time student or maintain the full-time equivalent of combined part-time studies and employment.

¶5 Griggs filed a postconviction motion for sentence modification, contending that mitigating factors warranted a lighter sentence, that his character was not meaningfully considered by the circuit court, and that the nature and length of his sentence were not appropriately explained. Griggs also asserted that the full-time employment requirement of extended supervision had to be modified to accommodate Griggs's physical condition. Specifically, Griggs had a bullet lodged near his spine from an incident in 2006; the bullet had caused temporary paralysis and adversely impacted his gait, and had the potential to cause new paralysis should Griggs be reinjured.

¶6 The circuit court rejected the motion, stating that its sentence had been adequately considered and explained. The circuit court also clarified that Griggs's "education and employment are necessary and appropriate conditions of his supervision and are critical to his rehabilitation." On appeal, Griggs is essentially repeating the allegations of his postconviction motion.

DISCUSSION

¶7 Sentencing is committed to the circuit court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. A defendant challenging a sentence has a burden to show an unreasonable or unjustifiable basis in the record for the sentence at issue. *See State v. Lechner*, 217 Wis. 2d 392, 418, 576 N.W.2d 912, 925 (1998). We start with a presumption that the circuit court acted reasonably, and we do not interfere with a sentence if discretion was properly exercised. *See id.*, 217 Wis. 2d at 418–419, 576 N.W.2d at 925.

¶8 In its exercise of discretion, the circuit court is to identify the objectives of its sentence, which include but are not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. *Gallion*, 2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. In determining the sentencing objectives, we expect the circuit court to consider a variety of factors, including the gravity of the offense, the character of the defendant, and the need to protect the public. See *State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 698, 786 N.W.2d 409, 415. The weight assigned to the various factors is left to the circuit court’s discretion. *Ibid.* The amount of necessary explanation of a sentence varies from case to case. *Gallion*, 2004 WI 42, ¶39, 270 Wis. 2d at 556, 678 N.W.2d at 207.

¶9 We reject outright Griggs’s claim that mitigating factors were not properly considered. The circuit court noted that it had received a “kind letter” from one of Griggs’s friends, describing Griggs as a “people person” who cared about children and liked to help others. The circuit court considered Griggs’s emotional pain: his mother had died from complications of diabetes in 2005, and his stepfather had been killed in the same 2006 incident that injured Griggs. The circuit court additionally noted Griggs’s physical pain from his own injuries, and accounted for Griggs’s struggles with heroin, marijuana, and alcohol.

¶10 We also reject the argument that Griggs’s character was not meaningfully considered. After considering the mitigating factors described above, the circuit court discussed several aspects of Griggs’s character. It observed that he appeared to have no empathy for others. It noted that Griggs had chosen not to finish school and had passed on opportunities to learn to read because he would prefer to “shoot up.” The circuit court noted that Griggs had a long criminal record, suggesting that Griggs evidently was “never learning” from

his punishments. Of particular note, the circuit court commented that, contrary to Griggs's contention, his antisocial behavior did not begin with his mother's death in 2005 or his stepfather's death in 2006. Rather, his negative behavior went back to at least 1997 with a juvenile incident involving animal cruelty wherein Griggs stole and brutally tortured a dog.

¶11 Ultimately, Griggs's disagreement is with the weight the circuit court assigned to various factors, not the factors themselves. However, "the weight that is attached to a relevant factor in sentencing" is within the circuit court's wide discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 237, 688 N.W.2d 20, 26. Griggs is not entitled to resentencing just because he disagrees with the circuit court's choice to give more weight to negative factors than Griggs feels was warranted. Nor is Griggs entitled to resentencing just because he thinks the mitigating factors should have received more emphasis.

¶12 To the extent that Griggs renews his argument that the circuit court did not adequately link the sentencing objective or factors to the length of the sentence, we reject that argument as well. Griggs appears to argue that the circuit court should have better explained the weight it gave to each objective or factor and explain how each element translated into a specific sentence length. *See State v. Fisher*, 2005 WI App 175, ¶21, 285 Wis. 2d 433, 447, 702 N.W.2d 56, 63. Griggs is not entitled to that degree of specificity. *See id.*, 2005 WI App 175, ¶22, 285 Wis. 2d at 447, 702 N.W.2d at 63. If the circuit court "has considered the proper factors, explained its rationale for the overall sentence it imposes, and the sentence is not unreasonable, the court does not erroneously exercise its discretion simply by failing to separately explain its rationale for each and every facet of the sentence imposed." *State v. Matke*, 2005 WI App 4, ¶19, 278 Wis. 2d 403, 417, 692 N.W.2d 265, 273.

¶13 Our review of the Record satisfies us that the circuit court properly exercised its sentencing discretion. In addition to the factors already described above, the circuit court also considered the nature of the crime, describing it as vicious and direct. The circuit court noted that Griggs had caused an awful harm to his victim, who now had a bullet lodged in him. The circuit court commented that Griggs had elected a “totally disgusting” way to resolve an argument. It determined that there were three sentencing objectives: to teach Griggs a lesson, to keep Griggs away from the community, and to send a message to others. The circuit court commented that a long sentence was necessary to accomplish those objectives, particularly the latter two. In short, the circuit court considered only proper objectives and factors. *See ibid.* That Griggs would prefer a different or more detailed explanation is not a basis for reversal.

¶14 Griggs also contends that the full-time-employment requirement “must be modified to reasonably accommodate Mr. Grigg’s [*sic*] physical condition and cognitive disabilities without risk of penalties.” (Capitalization omitted.) He complains that the circuit court “did not consider the consequences to Mr. Griggs’s status if he is not able to satisfy that condition while on supervision due to his medical condition.” He asserts that the circuit court and parties “may not be able to foresee what changes, if any, may occur to Mr. Griggs” during his confinement and that the requirement “may be impossible to satisfy or present a hardship given his physical and cognitive limitations.” Griggs further alleges that this condition of extended supervision violates his equal protection rights because “a different defendant who has no physical impediment or cognitive disability may not encounter any unusual challenge in the court of satisfying the court ordered condition and may be able to succeed.”

¶15 WISCONSIN STAT. § 973.01(5) permits a circuit court to impose conditions on a defendant's term of extended supervision. "It is within the broad discretion of the [circuit] court to impose conditions as long as the conditions are reasonable and appropriate." *State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 837, 656 N.W.2d 499, 501. "Whether a condition of extended supervision is reasonable and appropriate is determined by how well it serves the dual goals of supervision: rehabilitation of the defendant and the protection of a state or community interest." *State v. Miller*, 2005 WI App 114, ¶11, 283 Wis. 2d 465, 474, 701 N.W.2d 47, 52. Conditions "may impinge upon constitutional rights as long as they are not overly broad and are reasonably related to the person's rehabilitation" because "[c]onvicted felons do not enjoy the same degree of liberty as those who have not been convicted of a crime." *State v. Stewart*, 2006 WI App 67, ¶12, 291 Wis. 2d 480, 488, 713 N.W.2d 165, 169.

¶16 The circuit court explained that Griggs would have half of his life ahead of him upon his release, and that Griggs had a choice on the direction his life could now take, positive or negative. The circuit court was hopeful that if Griggs took advantage of positive opportunities during his sentence, he might begin to see an improvement in things "as soon as [he] possibly can learn to read." As the circuit court later clarified in the order denying the postconviction motion, *see State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243, 247 (Ct. App. 1994), it viewed the education and employment conditions as "critical" to Griggs's rehabilitation.

¶17 At the conclusion of the circuit court's sentencing comments, trial counsel had pointed out that Griggs was receiving supplemental security income because of his disability and asked the circuit court whether the employment condition would appropriately be modified to full-time work or school "as able."

The circuit court declined the modification based on personal experience with a relative who, despite paralysis, had completed college and law school before serving as a federal judge for thirteen years. While noting that this relative had some advantages likely not available to Griggs, the circuit court was nevertheless of the opinion that Griggs “can get and keep a job of one sort or another and having been disabled in the past is not going to keep him from that.”

¶18 The requirement of full-time employment, education, or a combination thereof is reasonable and appropriate, particularly to the extent that it will require Griggs to focus his energy on lawful, non-destructive pursuits. Education, both in the form of a high school diploma or equivalent and any higher education Griggs might pursue, will help him to combat any “cognitive disability” that presents a challenge to his employment. The requirement of full-time employment or education thus works to advance both the rehabilitation goal and the community-protection goal.

¶19 Ultimately, Griggs’s objections to the employment conditions stem from hypothetical concerns—that he might not be able to complete an education, that he might be reinjured or that he might become physically unable to perform a manual-labor job. However, Griggs does not demonstrate why the condition is presently unreasonable or otherwise improper. He also makes no contention or showing that, should his fears come to pass, he would be unable to obtain relief from the circuit court based on a change in circumstance. We are further not persuaded that any actionable equal protection violation has occurred.

¶20 Instead, we are satisfied that the circuit court properly exercised its sentencing discretion in the first instance, and properly exercised its discretion in denying the postconviction motion. While Griggs appears to believe the circuit

court's sentencing rationale should have been more specific, the sentence is the product of a proper exercise of discretion. Further, Griggs has not shown the full-time-employment condition of extended supervision to be unreasonable. Accordingly, the circuit court was justified in denying the postconviction motion seeking to modify the sentence.

By the Court.—Judgment and order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

